

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

AMNESTY INTERNATIONAL USA, CENTER
FOR CONSTITUTIONAL RIGHTS, INC., and
WASHINGTON SQUARE LEGAL SERVICES,
INC.,

Plaintiffs,

v.

07 CV 5435 (LAP)

CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE, DEPARTMENT
OF HOMELAND SECURITY, DEPARTMENT
OF JUSTICE, DEPARTMENT OF STATE, and
THEIR COMPONENTS,

**DECLARATION OF VANIA
T. LOCKETT**

Defendants.

I, Vania T. Lockett, hereby declare and state as follows:

1. I am the Associate Director of Disclosure and Freedom of Information Act (“FOIA”) Operations within the Privacy Office of the Department of Homeland Security (the “DHS FOIA Office”). I make this declaration in support of the Department of Homeland Security’s Motion for Partial Summary Judgment. The statements I make in this declaration are made on the basis of personal knowledge, my review of files within the DHS FOIA Office, and information I have received in the performance of my official duties.
2. I have held the position of Associate Director of Disclosure and FOIA Operations since December 2006. My duties include the management of day-to-day operations of the Department of Homeland Security (“DHS” or the “Department”) FOIA program, which processes FOIA and Privacy Act requests made pursuant to 5 U.S.C. § 552 and 5 U.S.C. § 552a,

respectively. As the Associate Director of Disclosure and FOIA Operations, I am familiar with DHS's obligations under FOIA, as well as the procedures followed by DHS in responding to FOIA requests.

DHS FOIA Processing, In General

3. DHS is currently comprised of the following components: the Office of the Secretary; the Office of the Under Secretary for Management; the Office of the Under Secretary for Science and Technology; National Protection and Programs Directorate; the Office of Policy; the Office of Health Affairs; the Office of Intelligence and Analysis; the Office of Operations Coordination; the Federal Law Enforcement Training Center; the Domestic Nuclear Detection Office; the Office of the General Counsel; the Office of Legislative Affairs; the Office of Public Affairs; the Office of the Inspector General; the Office of the Citizenship and Immigration Services Ombudsman; the Office of the Chief Privacy Officer; the Office of Civil Rights and Civil Liberties; the Office of Counternarcotics Enforcement; the Transportation Security Administration; U.S. Customs and Border Protection; U.S. Citizenship and Immigration Services; U.S. Immigration and Customs Enforcement; U.S. Secret Service; the Federal Emergency Management Agency; and the U.S. Coast Guard.

4. Currently, most DHS components have independent FOIA processing responsibilities, with personnel who accept FOIA requests directly from requesters. A list of such components is available at www.dhs.gov/xfoia/Copy_of_editorial_0318.shtm. The DHS components that currently lack independent FOIA processing responsibilities are the Offices of the Secretary, Health Affairs, Domestic Nuclear Detection, Legislative Affairs, Public Affairs, the Citizenship and Immigration Services Ombudsman, and Counternarcotics Enforcement. The DHS FOIA Office is responsible for processing FOIA requests received by these offices.

5. Federal regulations codified at 6 C.F.R. § 5.3(a) instruct FOIA requesters seeking records to “write directly to the Department component that maintains those records.” 6 C.F.R. § 5.3(a). Where a requester “cannot determine where within the Department to send [a] request,” federal regulations permit the individual to send the request to my office, *id.*, where my staff will make sure that the request goes to any component we believe would likely maintain responsive records. If my staff determines that a component with independent responsibility for processing FOIA requests is likely to have the responsive documents, we generally will refer the request to the component’s FOIA officer, who will process the request and respond directly to the requester.

6. If a component serviced by my office is likely to possess records responsive to the FOIA request, my office will initiate the search by instructing appropriate staff to search within their files for records that may be responsive to the request and to deliver any potentially responsive records, along with their views on potential exemptions, to my office for processing. My office depends upon the staff at the respective components to search for responsive records and provide those records to my office.

Receipt Of Plaintiffs’ FOIA Request

7. By letter dated April 25, 2006, Plaintiffs Amnesty International USA and Washington Square Legal Services, Inc. (collectively, “Plaintiffs”) submitted a FOIA request addressed to the DHS FOIA Office, entitled “Request Submitted Under the Freedom of Information Act for Records Concerning Detainees, including ‘Ghost Detainees/Prisoners,’ ‘Unregistered Detainees/Prisoners,’ and ‘CIA Detainees/Prisoners’” (the “FOIA Request” or “Plaintiffs’ FOIA Request”). The FOIA Request stated that it sought records regarding “individuals who were, have been, or continue to be deprived of their liberty by or with the

involvement of the United States and about whom the United States has not provided public information.” A true and complete copy of Plaintiffs’ FOIA Request is attached to this declaration as Exhibit A.

8. The DHS FOIA Office acknowledged Plaintiffs’ FOIA Request by letter dated May 3, 2006. A true and complete copy of the May 3, 2006 letter is attached to this declaration as Exhibit B.

9. The FOIA Request stated that it had been simultaneously filed with the Office of Intelligence and Analysis (“I&A”), the Directorate for Policy (the “Office of Policy”), U.S. Immigration and Customs Enforcement (“ICE”), U.S. Citizenship and Immigration Services (“USCIS”), U.S. Coast Guard, and U.S. Customs and Border Protection (“CBP”). At the time our office received the FOIA Request, we had responsibility for processing FOIA requests for the Office of Policy, but none of the other offices that received the FOIA Request. The DHS Office of Policy gained full responsibility for processing its own FOIA requests on April 2, 2007. Details regarding the search by the Office of Policy are therefore included in the Declaration of Nicole Bertucci from the Office of Policy.

10. Our staff determined that no DHS office was likely to maintain records responsive to the request because DHS does not have any programs, known to our staff, which involve detaining individuals “about whom the United States has not provided public information.” Although no offices at DHS were likely to maintain responsive records, we determined that, in the unlikely event that any DHS offices maintained responsive records, those offices most likely would be: ICE, Coast Guard, and CBP, because those are the DHS offices primarily involved in the detention of aliens; I&A, because that office is the central intelligence arm of DHS; and the Office of Policy, because that office considers wide-ranging policy issues involving DHS. Each

of these offices, however, received the FOIA Request directly from Plaintiffs.

11. The DHS FOIA Office nevertheless coordinated a search of the Office of the Executive Secretariat because, although no DHS office was likely to have documents responsive to the FOIA Request, we decided, in an abundance of caution, that a search of the Office of the Executive Secretariat would be helpful in identifying any office at DHS that had not been searched but that in fact maintained responsive records. A search of the Executive Secretariat was likely to identify any DHS office with responsive documents because, as described in greater detail in paragraph 12 below, the Executive Secretariat functions as a document clearinghouse for the senior leadership. Moreover, as further described in paragraph 19 below, the Executive Secretariat coordinates and disseminates certain significant classified communications of the Secretary and the Deputy Secretary of the Department.

Description of the Office of the Executive Secretariat

12. The Office of the Secretary is comprised of the Secretary, the Deputy Secretary, the Chief of Staff, the Military Advisor, and the Office of the Executive Secretariat. The Office of the Executive Secretariat has primary responsibility for managing records for the Secretary and the Deputy Secretary. The Office of the Executive Secretariat manages these records through a shared network drive and an electronic database called IQ/Executive Correspondence Tracking system. The mission of the Office of the Executive Secretariat is to support the Secretary and Deputy Secretary by accurately and timely disseminating information and written communications throughout the Department and among homeland security partners, such as the Homeland Security Council, the Department of Justice, and the Department of State. The Office of the Executive Secretariat further supports the Office of the Secretary by developing, implementing, and managing processes for written communications, including Secretary and

Deputy Secretary briefing book materials, correspondence, action and information memoranda, and written communications from the White House and other agencies. In addition, the Office of the Executive Secretariat is a central clearinghouse for DHS documents at the headquarters level. The documents managed by this Office include senior official level briefing materials, correspondence, and information and action memoranda to and from the DHS Secretary/Deputy Secretary and component heads.

The Executive Secretariat's Search

13. On October 11, 2007, my office tasked the Office of the Executive Secretariat to search its records.

14. Employees in the Office of the Executive Secretariat first conducted a search of unclassified records by searching the e-mails of the Deputy Executive Secretary, the shared network drive, and the IQ/Executive Correspondence Tracking system.

15. The Deputy Executive Secretary manages operations for the Office of the Executive Secretariat. The Deputy Executive Secretary facilitates communications and clearance reviews between the various DHS components, is copied on nearly all interagency communications at the DHS Secretary or Deputy Secretary level, and serves as the point of contact for communications between DHS and the White House. The Deputy Executive Secretary is therefore copied on, inter alia, emergency declarations for approval by the DHS Secretary for transmittal to the White House, arrangements with the White House for policy meetings, and communications between DHS components and outside agencies, including other homeland security stakeholders.

16. The following terms were used in an electronic search of the text of the Deputy Executive Secretary's e-mails: "detainees," "ghost detainees," "unregistered detainees,"

“unregistered prisoners,” “CIA detainees,” “CIA prisoners,” “rendition,” “ghosting,” and “ghost.” The queries returned no documents.

17. All of the DHS Secretary and Deputy Secretary briefing materials are stored on the shared drive, which has standard filing conventions to facilitate access and searching for responsive FOIA materials. The following search terms were used in an electronic search of document titles, text, and subjects: “detainees,” “ghost detainees,” “unregistered detainees,” “unregistered prisoners,” “CIA detainees,” “CIA prisoners,” “rendition,” “ghosting,” and “ghost.” The queries returned no documents.

18. The IQ/Executive Tracking System is a tasking/archiving tool that is used to track all of the DHS Secretary and the Deputy Secretary’s correspondence, action and information memoranda and directives from the DHS Secretary and Deputy Secretary. The following search terms were used in an electronic query of document titles/text/subjects: “detainees,” “ghost detainees,” “unregistered detainees,” “unregistered prisoners,” “CIA detainees,” “CIA prisoners,” “rendition,” “ghosting,” and “ghost.” The queries returned no documents.

19. In addition to the searches described above, an employee in the Executive Secretariat conducted a hand search of the office’s classified materials. The Office of the Executive Secretariat receives and disseminates certain classified communications of the DHS Secretary and the Deputy Secretary. Other classified communications of the DHS Secretary and Deputy Secretary are facilitated by I&A, which, as noted above, was separately tasked with searching for any documents responsive to the FOIA Request. Copies of classified documents disseminated by the Office of the Executive Secretariat are logged and stored in a classified safe.

20. Although we do not normally conduct a hand search of classified materials in response to FOIA requests, in the interest of ensuring as thorough a search as possible, we did so

in this case. The reviewer examined the title and/or subject line of each classified document for any documents potentially responsive to the FOIA Request. If, upon the initial examination, there was any ambiguity as to the potential responsiveness of the document, the reviewer read the document to determine whether the document was responsive to the FOIA Request. The reviewer had a copy of the FOIA Request during this review. No responsive documents were found.

21. Each step in handling this FOIA request was consistent with, or above and beyond, DHS procedures for responding to FOIA requests. All files likely to contain responsive materials were searched.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 29 day of November, 2007.



VANIA T. LOCKETT